

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE - GENERAL ADMINISTRATION

PREAMBLE

1. Sections Affected

Article 4	<u>Rulemaking Action</u>
R15-10-401	New Article
R15-10-402	New Section
R15-10-403	New Section
R15-10-404	New Section
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 42-105

Implementing statute: A.R.S. § 42-139.14
3. The effective date of the rules:

March 13, 1998
4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 2 A.A.R. 4824, November 29, 1996

Notice of Proposed Rulemaking: 3 A.A.R. 2516, September 12, 1997
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Jerry Skinner, Tax Analyst

Address: Arizona Department of Revenue
Tax Research and Analysis Section
1600 West Monroe
Phoenix, Arizona 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680
6. An explanation of the rule, including the agency's reasons for initiating the rule:

The rules implement the statutory provisions of A.R.S. § 42-139.14 with respect to reimbursement of fees and other costs related to an administrative proceeding. The rules are mandated by A.R.S. § 42-139.14.
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.
8. The summary of the economic, small business, and consumer impact:

Identification of the Rulemaking:

The rules are mandated by A.R.S. § 42-139.14.

Summary of Information in the Economic, Small Business, and Consumer Impact Statement:

The benefits of the rules are greater than the costs. The rules benefit the public by establishing the procedure by which taxpayers may apply to the department for reimbursement of fees and other costs related to an administrative proceeding. The Department will incur the costs associated with the rulemaking process. Taxpayers will incur some expense by the adoption of these rules.

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9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

None.

10. A summary of the principal comments and the agency response to them:

The Department did not receive any written or oral comments on the rule action after the publication of the rulemaking in the Notice of Proposed Rulemaking.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules:

None.

13. Was the rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

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CHAPTER 10. DEPARTMENT OF REVENUE - GENERAL ADMINISTRATION

**ARTICLE 4. REIMBURSEMENT OF FEES AND OTHER
COSTS RELATED TO AN ADMINISTRATIVE
PROCEEDING**

Section

R15-10-401. Application for Reimbursement of Fees and Other
Costs Related to an Administrative Proceeding

R15-10-402. Documentation of Payment of Fees and Other
Costs

R15-10-403. Filing an Application

R15-10-404. Decisions

**ARTICLE 4. REIMBURSEMENT OF FEES AND OTHER
COSTS RELATED TO AN ADMINISTRATIVE
PROCEEDING**

**R15-10-401. Application for Reimbursement of Fees and
Other Costs Related to an Administrative Proceeding**

A. To apply for reimbursement of reasonable fees and other costs, as provided in A.R.S. § 42-139.14, a taxpayer shall file a written application with the Department's problem resolution officer.

B. An application shall include the following:

1. Taxpayer's name, address, and identification number;
2. Identification of the tax type and the administrative proceeding for which reimbursement is sought;
3. A detailed explanation of the reasons why the taxpayer alleges that the position of the Department in the administrative proceeding was not substantially justified;
4. If multiple issues were presented in the administrative proceeding and the taxpayer did not prevail on all issues, a detailed explanation of the issue or set of issues on which the taxpayer prevailed, a detailed explanation of the issues or set of issues on which the taxpayer did not prevail, and a detailed explanation as to why the

issue or set of issues on which the taxpayer prevailed is the most significant issue or set of issues presented in the administrative proceeding;

5. A statement that the taxpayer has not unduly and unreasonably protracted the administrative proceeding for which reimbursement is sought;

6. A statement that the reason the taxpayer prevailed was not due to an intervening change in the applicable law; and

7. A detailed explanation of the nature and amount of each specific item for which reimbursement is sought.

C. An application may also include any other matters that the taxpayer wishes the Department's problem resolution officer to consider in determining whether and in what amount reimbursement should be made.

D. The taxpayer shall sign the application. It shall contain or be accompanied by a written verification under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.

E. If a paid representative of the taxpayer prepares the application, the representative shall also sign the application. It shall contain or be accompanied by a written verification under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the representative's information and belief.

F. Fees and other costs incurred in making application for reimbursement or regarding an appeal of a decision for reimbursement do not relate to an administrative proceeding in connection with an assessment, determination, collection, or refund of tax as required by A.R.S. § 42-139.14. Therefore, fees and other costs incurred with respect to an application or appeal under A.R.S. § 42-139.14 are not reimbursable.

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R15-10-402. Documentation of Payment of Fees and Other Costs

The taxpayer shall submit with the application documentation which shows payment of the fees and costs for which the taxpayer seeks reimbursement. The taxpayer shall submit a separate itemized statement for each firm or individual that provided services covered by the application. The itemized statement shall show the hours spent in connection with the administrative proceeding by each individual, a description of the specific services performed, and the rates used in computing each fee. Each statement shall reflect payment or the taxpayer shall attach proof of payment to the statement. Separate, itemized statements of any other costs incurred by the taxpayer, together with proof of payment, shall also accompany an application.

R15-10-403. Filing an Application

A. A taxpayer shall file an application for reimbursement of fees and other costs only after the conclusion of administrative proceedings, but not later than 30 days after the conclusion of administrative proceedings.

B. For purposes of this rule, the conclusion of administrative proceedings is determined as follows:

1. For a decision of a hearing officer or administrative law judge, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the decision unless, within the 30-day period, 1 of the following occurs:

a. The taxpayer appeals the decision, or any part of the decision, to the State Board of Tax Appeals;

b. The taxpayer or the Department petitions the Director to review the decision or any part of the decision;

c. The Director independently determines that the decision, or any part of the decision, requires review.

2. When a decision of a hearing officer or administrative law judge is subject to a review by the Director, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the Director's decision unless, within the 30-day period, the taxpayer appeals the decision, or any part of the decision to the State Board of Tax Appeals.

3. When a taxpayer appeals a decision, or any part of a decision, to the State Board of Tax Appeals, the conclusion of administrative proceedings occurs 30 days after the taxpayer receives the decision of the State Board of Tax Appeals.

R15-10-404. Decisions

A. The Department's problem resolution officer shall issue a written decision on each application for reimbursement of fees and other costs. The problem resolution officer shall issue the decision within 30 days after receipt of the application and shall set forth the reasons for the decision.

B. The problem resolution officer's decision is issued when mailed to the taxpayer's address furnished in the application.